

**REMARKS BY LEGAL ADVISER HAROLD HONGJU KOH  
CONSULAR NOTIFICATION AND ACCESS OPEN HOUSE  
TUESDAY, FEBRUARY 8, 2011**

Thank you, Ambassador Jacobs, for this opportunity to say a few words about our commitment to the issue of consular notification and access. My office works closely with the Bureau of Consular Affairs to promote respect for consular legal obligations in the United States and abroad. Like Ambassador Jacobs, I'm especially pleased today to be able to announce the release of the third edition of the Consular Notification and Access Manual, a publication that anchors the joint efforts of our two offices to expand awareness by U.S. law enforcement about what to do to comply with the Vienna Convention on Consular Relations—the VCCR—and other consular treaties.

For centuries, a core responsibility of consular officers has been to protect the rights and security of their nationals living and traveling abroad, especially those in vulnerable situations, such as those who find themselves in the custody of a foreign government and face the prospect of navigating an unfamiliar legal system. The customary right to freedom of communication between consuls and their detained nationals was codified in Article 36 of the VCCR in three basic rules: authorities must ask the detainee “without delay” if he or she wants to have the consulate notified; notify the consulate if so; and allow consular access if the consulate requests it. These rules have since been widely applied, and in our view they constitute customary international law, binding even on the small number of countries that have not yet joined the VCCR.

The rules seem straightforward enough. But we have found, as I'm sure your government has as well, that it's not always easy to make sure they're applied in practice. The text of the VCCR itself leaves many critical questions unanswered, such as what it means to notify “without delay.” The international legal obligations codified in Article 36 are exceptional in that it is not the national government, but each individual law enforcement officer in every state and county across the country—almost a million people—who are called upon to implement the rules in actual cases day after day, usually without the federal government ever knowing about the case or needing to get involved. And while compliance is no simple task for any country, law enforcement officers in the United States confront a rather unique set of circumstances. First, few other countries host the volume of foreign nationals that we do, spread across every corner of the country. Second, America is a melting pot and its citizenry is made up of people of all different backgrounds and cultures. Law enforcement cannot rely on things such as appearance, skin color, or even non-fluency in English as an indication that the person they've arrested is a foreign national. Even explicitly asking each and every arrested person whether they're a foreign national doesn't always solve the problem, because

some do not wish to disclose their foreign nationality, and some may not even know they have the citizenship of another country.

Facing these and other challenges, we know that our record of compliance with our obligations has not been perfect. We are all aware of the high-profile cases of recent years in which the United States has been publicly called to account for these shortcomings. We are mindful of our obligations in these cases and are working to remedy those past harms. But the biggest takeaway from these cases is that we must do more moving forward to ensure compliance with our obligations not just in the majority of cases, but in every case. The Department of State is committed to overcoming the challenges and achieving 100 percent compliance with the VCCR and our other consular treaty obligations. We believe these efforts are bearing fruit: compliance has improved steadily over the years thanks in large measure to the outreach efforts of Consular Affairs, but we realize more needs to be done.

The manual represents the centerpiece of our mission to spread the word about consular notification and access and explain how law enforcement should apply the obligation. Much of the advice in the manual is compiled from decades of experience my office and Consular Affairs have gained in responding to real-life challenges faced by law enforcement officials in the course of their work. Among many other items, the manual contains instructions on the types of detentions that trigger the obligation to notify; how to determine if someone is a foreign national; how and when to advise the detainee of the option to have the consulate notified; what to do if you cannot communicate with the detainee; when and how the consulate should be contacted; how to accommodate a consulate's request for access; and the restrictions that can and cannot be placed on access. It also contains advice on consular notification for minors, incompetent adults, those involved in sea or air accidents, and deaths, and what to do when the detainee comes from a country with a bilateral treaty requiring notification regardless of the detainee's wishes.

Our commitment to consular notification and access is rooted first and foremost in our respect for the international rule of law. But it is also motivated by considerations of reciprocity. We accord these rights to consular officers in the confident expectation that if the situation is reversed, American consular officers overseas will be accorded equivalent rights to protect our nationals. I'm sure your country, as ours, appreciates both the importance and the challenges of making sure consular officers and their nationals on your territory can exercise their rights to consular notification and access. We'll continue to do our part in the spirit of partnership, and stand ready to assist you in any way we can. Thank you.